

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**JOSEPH SIMS,**

**Plaintiff,**

**v.**

**1:16-CV-762 (BKS/TWD)**

**CSX TRANSPORTATION INC.,**

**Defendant.**

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**Appearances:**

Joseph Sims  
Stillwater, NY 12170  
*Plaintiff Pro Se*

Scott A. Barbour, Esq.  
McNamee, Lochner Law Firm  
677 Broadway  
Albany, NY 12207  
*Attorney for Defendant*

**Hon. Brenda K. Sannes, United States District Judge:**

**MEMORANDUM-DECISION AND ORDER**

On June 27, 2006, Plaintiff Joseph Sims commenced this action under the Federal Employers' Liability Act, 45 U.S.C. § 51, *et seq.*, the Federal Safety Appliances Act, 49 U.S.C. § 20301, *et seq.*, and the Locomotive Inspection Act, 49 U.S.C. § 20701, *et seq.*, seeking to recover damages for personal injuries incurred during his employment as an engineer. Dkt. No. 1. On January 31, 2017, Plaintiff's counsel filed a motion to withdraw as counsel due to their inability to contact Plaintiff. Dkt. No. 18. United States Magistrate Judge Thérèse Wiley Dancks granted that motion in a text Order on April 11, 2017, and directed Plaintiff to notify the Court within thirty days of any new counsel retained. Dkt. No. 19. The text Order was returned to the Court

as undeliverable on April 20, 2017, and Plaintiff never complied with the Order. On August 3, 2017, Magistrate Judge Dancks issued an Order and Report-Recommendation recommending that this action be dismissed without prejudice under Fed. R. Civ. P. 41(b), and N.D.N.Y. L.R. 41(b). Dkt. No. 23. Magistrate Judge Dancks advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the Report, and that the failure to object to the Report within fourteen days would preclude appellate review. Dkt. No. 23, p.10. No objections to the Report-Recommendation have been filed; the copy mailed to Plaintiff was returned to the Court as undeliverable on August 17, 2017. Dkt. No. 24.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts it in its entirety.

For these reasons, it is

**ORDERED** that the Report-Recommendation (Dkt. No. 23) is **ADOPTED** in its entirety; and it is further

**ORDERED** that the Complaint (Dkt. No. 1) is **DISMISSED** in its entirety without prejudice under Rule 41(b) of the Federal Rules of Civil Procedure based on the Plaintiff's failure to prosecute and comply with this Court's orders and local rules of practice; and it is further

**ORDERED** that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

**Dated: September 6, 2017**

A handwritten signature in black ink, reading "Brenda K Sannes", written over a horizontal line.

Brenda K. Sannes  
U.S. District Judge